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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 08 2007
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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a research associate. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a statement. For the reasons discussed below, the petitioner has not overcome the director's legitimate concerns.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner holds a Master's degree from the Universite de Poitiers and a Diploma of Detailed Studies in Chemistry and Biochemistry from the University of Dakar. While the petitioner did not submit an evaluation of her foreign credentials, the director did not contest that the petitioner qualifies for the classification sought as an advanced degree professional or an alien of exceptional ability. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, virology, and that the proposed benefits of her work, identifying novel targets for the development of antiviral therapies for herpes viruses, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

In her initial letter, the petitioner's current supervisor, Dr. [redacted] asserts that before hiring the petitioner, several aspects of certain projects could not be accomplished in a timely fashion because Dr. [redacted] was unable to find a researcher with the petitioner's unique qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

In support of the petition, the petitioner has submitted several reference letters from colleagues at institutions where she is or was employed. The petitioner also submitted articles she has authored and articles to which she contributed enough to be acknowledged, but not enough for authorship credit. The director concluded that the letters did not establish that the petitioner's work is known beyond her circle of colleagues, that the record lacked citations of the petitioner's published work and that the petitioner had not established the importance of her role on projects at Ohio State University, for which she had not received authorship credit as of the date of filing.

On appeal, counsel asserts that the petitioner cannot be replaced on her project because she assisted with the building of the project and another qualified researcher would not be as familiar with the project. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). We will examine the precise statements of the petitioner's supervisors below.

Regardless, simple exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an application for alien employment certification. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221. Moreover, the petitioner's many years of experience, while notable, do not justify a waiver of the alien employment certification. The regulations indicate that ten years of progressive experience is one possible criterion that may be used to establish exceptional ability. Because exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement, arguments hinging on the degree of experience required for the profession, while relevant, are not dispositive to the matter at hand. *Id.* at 222. Thus, the petitioner

must demonstrate more than her years of experience in the field and on a particular project; she must demonstrate that she has made contributions that, to some degree, have influenced the field as a whole.

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of the importance of the project and competence in completing assigned duties are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through her reputation and who have applied her work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

As stated above, the petitioner received her Diploma of Detailed Studies from Dakar University in 1981. The petitioner has also documented her employment at the Laboratory for Toxicology, Industrial Hygiene and Control at Omar Bongo University in Gabon Republic. The petitioner indicates she was there from 1985 to 1998. In 1999, the petitioner joined the Ohio State University as a research assistant and in 2002 was promoted to a research associate at the same institution.

Dr. [redacted] currently a professor at the University of Nantes, France, indicates that he knows the petitioner from his former position at a professor at Dakar University. Dr. [redacted] asserts that while a student, the petitioner collected red seaweed and "purified and identified interesting organic compounds, leading to better understanding of the ecological niche, and chemistry" of the seaweed. According to Dr. [redacted] the research team reoriented their work based on the petitioner's findings. Dr. [redacted] and the petitioner coauthored a published article in 1982. Professor [redacted] of Dakar University provides similar information.

Any graduate thesis or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. Dr. [redacted] does not explain how the petitioner's work with seaweed has impacted marine biology beyond her colleagues as Dakar University.

As evidence of her work at Omar Bongo University, the petitioner submitted letters from Dr. [redacted], a former postdoctoral researcher at Omar Bongo University, and Dr. [redacted], an assistant professor at that university. Dr. [redacted] asserts that the petitioner trained and educated herself in molecular biology, genetics and virology so that she was "able to participate in research generating transgenic mice and viral mutants, in particular herpes simplex virus mutants." Dr. [redacted] asserts that the generation of transgenic mice and viral mutants are important steps towards understanding genetic diseases and the development of antiviral compounds. Dr. [redacted] does not, however, identify any novel methods developed by the petitioner. Learning lab techniques already in use in the field is not a contribution to the field but the type of occupational training that can be articulated on an application for alien employment certification. Dr. [redacted] asserts that the work to which the petitioner contributed has "been the object of many reports and publications." The record contains no reports or publications referencing work credited to the petitioner.

At the Ohio State University, the petitioner first worked as a technician in the laboratory of Dr. [redacted]. Dr. [redacted] asserts that the petitioner was responsible for cassava plant tissue culture and its molecular analysis. Dr. [redacted] further asserts that the petitioner's work allowed the team to make rapid progress on their project, which involves a major subsistence crop in Africa. Dr. [redacted], Chairman of the Ohio State University's School of Public Health, Division of Environmental Health Sciences, explains that the goal of the project was to reduce levels of cyanide in cassava. Dr. [redacted] Msikita, a postdoctoral researcher at the Ohio State University, asserts that the petitioner utilized a technique "widely **used in medical and plant research to multiply DNA and to verify the presence of** genes of interest." Dr. [redacted] asserts that this work "is testimony to her qualification as a scientist." In a subsequent letter, Dr. [redacted] asserts that the project could not have gone forward without the petitioner's participation.

There is no evidence, however, that the petitioner's role in Dr. [redacted] laboratory was sufficient to garner authorship credit on any publication or that the work became influential based on the methods used for tissue culture and molecular analysis. While a skilled and experienced technician may be important to such studies, the petitioner has not explained why the alien employment certification process would not address the employer's need for someone with the petitioner's skills and experience. The national interest waiver is not warranted simply because the petitioner is a qualified laboratory technician who has performed competently.

The petitioner then worked in the laboratory of Dr. [redacted] until Dr. [redacted] left the Ohio State University. Dr. [redacted] asserts that the position only required a bachelor's degree although the petitioner has a higher level of education. Dr. [redacted] praises the petitioner's technical skills and asserts that she was qualified for her position in the Division of Environmental Health Sciences. Dr. [redacted] fails, however, to identify any contributions the petitioner made to the field of toxicology. Dr. [redacted] explains that in Dr. [redacted] laboratory, the petitioner worked on BRCA2, a gene linked to breast cancer. The petitioner worked on studies evaluating the interaction of environmental factors on BRCA2. While Dr. [redacted] asserts that these results "will potentially influence treatment strategies for breast cancer and have an [sic] valuable impact on better understanding the etiology of the disease," the

record lacks evidence that the petitioner's role on this project was sufficient to garner authorship credit or that the resulting publications have been recognized as significant, such as through wide citation.

In 2002, the petitioner began a research associate position in the laboratory of Dr. [redacted] at the Ohio State University, Department of Molecular Virology, Immunology and Medical Genetics. Dr. [redacted] explains that her laboratory is working towards identifying novel targets for the development of antiviral therapies for herpes viruses and understanding DNA replication in animal cells. Dr. [redacted] indicates that the petitioner "efficiently purified several of the herpesvirus DNA replication proteins and has shown that one of them works closely with another to enhance unwinding." The petitioner has also contributed to the efficiency of other researchers in the laboratory. Dr. [redacted] asserts that she was previously unable to complete "several aspects" of her project because of a lack of a qualified research associate. As stated above, a shortage of qualified workers falls under the jurisdiction of the Department of Labor. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 221.

In a subsequent letter, Dr. [redacted] asserts that the petitioner is listed as critical personnel on a grant application. She submits the application, which gives the petitioner's title as "technician." Dr. [redacted] continues:

> I also have included copies of three papers from my laboratory in which [the petitioner's] research expertise and efforts were **SPECIFICALLY** acknowledged. These papers were published in the top-tier journals of their respective fields. . . . I acknowledge specifically only those individuals whose work was absolutely required for the project, but who played a somewhat smaller role than necessary for full authorship. When the role is important but not exactly required for the work, I generally acknowledge "members of the Parris laboratory."

(Emphasis in original.) Dr. [redacted] concludes that the work reported in the three articles would not have been possible without the petitioner's expertise. Dr. [redacted] makes clear that the petitioner's role on these projects, while necessary, did not rise to the level of those receiving authorship credit. Once again, we acknowledge the need for a laboratory to employ a skilled technician. Those skills, however, can be articulated on an application for alien employment certification.

Dr. [redacted] further states that the petitioner has completed work that a postdoctoral researcher had failed to complete and that the petitioner would be given authorship credit on the manuscript. As of the date of filing, this article had yet to be published and disseminated in the field. Thus, we cannot gauge the impact of this work. We note that all research, in order to be accepted for publication, must be original and present some benefit to the general pool of scientific knowledge. It does not follow that every researcher who authors a published article has influenced the field to such a degree as to warrant a waiver of the job offer in the national interest. The petitioner must also demonstrate the influence of the individual article, such as through evidence that the article is widely cited in the community.

The petitioner also assists in the laboratories of Dr. [redacted] and [redacted], both assistant professors at the Ohio State University. Both professors affirm that the petitioner has provided important technical assistance on their projects and Dr. [redacted] asserts that the petitioner has trained students in certain protocols. While each project as a whole may be important, neither professor explains how the petitioner's work has influenced the field. As stated above, not every alien qualified to work on an important project warrants a waiver of the alien employment certification in the national interest.

We acknowledge that the petitioner submitted a letter from Dr. [redacted] an associate professor at the Ohio State University, who confirms that he does not know the petitioner personally. This letter, however, still does not establish the petitioner's influence beyond the Ohio State University.

Finally, Dr. [redacted] an individual residing in New York who attests to his experience with a major pharmaceutical company, discusses the unique nature of the petitioner's background and asserts that the United States will benefit from taxing the petitioner's residual earnings from her inventions. Dr. [redacted] does not explain how he came to know of the petitioner or claim to have been influenced by the petitioner's work. He does not suggest that his pharmaceutical company has expressed interest in the petitioner's methods. We know of no binding legal authority suggesting that generating taxable revenues is a consideration in national interest waiver analysis.

The record shows that the petitioner is respected by her colleagues and has made useful contributions to government-funded projects. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.